(K) 1950 File No. Cr. A. Belgaum 50

Karnatak P 12F Legal DEPARTMENT Part-II
A BRANCH

Subject:—

Criminal Appeals in the High Court of Bombay against the order of acquittal in from Belgaum District.

(For previous papers, pl. see Part-I)

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(For further ppr. pl. see pt. III)

Cr. A Belgaum/50

Part II

417-A

File No.

Bd. Secr. Slip 24-B

Judgment recorded by the High Court in Criminal Appeal No. 731 of 1949 (By Government) in the case of State Vs. Ramangauda Lingangauda Patil No.1, and others.

The Government Pleader the State.
Mr. A.A.Mandgi, Advocate for the Accused.

CORAM: Gajendragadkar and Vyas, JJ.

Oral Judgment (Gajendragadkar, J.): 24th March 1950.

Eight persons were charged in the court of the Additional Sessions Judge, Belgaum, with having committed offences punishable under section 148 read with section 149 and section 302 read with section 34 of the Indian Penal Code. The charge under section 148 and section 149 was tried with the help of the jury whereas the charge under section 302 read with section 34 was tried with the help of assessors. The jury and the assessors were unanimously of the opinion that the respective charges had not been proved against any one of the eight accused. The learned Judge agreed with the said verdict and opinion and acquitted the accused of both the said offences. It is from this order of acquittal that the State of Bombay has preferred the presen appeal. It is true that as regards the order of acquittal under section 148 read with section 149, it is based upon the unanimous verdict of the Jury with which the learned Judge agreed and if the matter had rested only with regard to that charge, we would have required The Government Pleader to refer to us the misdirection or nondirection in the charge before the case was opened on the merits. But in the present appeal, the learned Government Pleader seeks to attack the finding of the learned Judge in respect of the charge under section 302 read with section 34 and he would be entitled to argue this appeal on the facts. That is why we have heard the

the lea-rned Government Pleader on the facts and we proposed to deal with the merits of the whole case. Shortly stated the prosecution case was that five murders were committed by the accused before the court. It appears that Rayangauda, his brother Basangauda , his nephew Sakkargauda, Chivraya and the complainant Tamangauda were all the members of the Patil family. The first four of these were the unfortunate victims of the assault which has given rise to the present case. Some of the accused also are members of the same Patil family. They are Nos. 1, 2 and 7. Accused Nos. 5 and 8 are brothers. The wife of accused No.2 and that wife of accused No.5 are sisters. It would appear that for some years before the commission of this offence, there were constant bickering and bitterness between the members of the family of the deceased and the accused. One Criminal case had been filed some time ago against accused No.2 for causing hurt. The prosecution case was that this was compounded by making Basangauda pay certain money and later on this amount was demanded back. The amount was not given and that added to the bitterness already existing between the parties. On the 14th March 1948, the deceased Sakkargauda and Basangauda and the complainant Tamangauda had gone to Saundatti to pay certain money to their father who had left the village and gone to Saundatti through fear and had settled down there. As these brothers were returning, they met Rajappa who was driving his cart. They asked for a lift and Rajappa readily agreed. As the cart was returing and had come near the river, the bullocks of the cart got frightened and when these men went rushing they came screened Nilava. Nilava in consequence dropped down the pitcher of water which she was carrying and fell down. Nilava is the wife of accused No.2. The brothers apprehended that this incident might be misrepresented as a deliberate attempt on their part of annoy and insult Nila-va and they therefore requested Rajappa to go and tell accused No.2 and his

relatives that the incident was purely accidental, and that the deceased had nothing to do with it. In fact Rajappa did go and give this explanation to the accused, but the prosecution case is that Rajappa's explanation was not believed by the accused and they trusted the version given by Nilava herself. Nilava was positive that this was deliberately done by the deceased and the complainant and that she virtually provoked the accused to avenge this insult. The prosecution case is that these five tragic murders on the evening of that day were intended to avenge the wrong alleged to have been committed to Nilava. About an hour or so before sunset all these accused armed themselves with axes, sickles and swords and came to the house of the deceased. A 1 first accused Nos. 1 and 5 dragged Basangauda. He tried to reason with his assailants but in vain. Rayangauda who happened to go there pointed out to the assailants that it was not worthy of the members of the Patil family to move about armed like that and to behave like Mavalia. It is alleged that the party of the assailants was thereupon annoyed and the accused No. 1 proceeded to hit Rayangauda on the stomach with an axe. Accused No. 5 cut him with an axe on his shoulder as he sat down. Meanwhile Basangauda came on the scene and accused No.5 hit him with an axe on his head. Sakkargauda who was standing out of the new house at a short distance from the old house, witnessed this incident and naturally came to the scene. He was immediately cut with a sword on his face by accused No.4. All the assailants then assaulted Sakkargauda and Shivaraya who was in his house was also drawn to the scene of the offence and received the same penalty. The accused No.2 cut him with a sickle on the stomach and the rest of the accused joined them in the assault. A stranger Yellappa who happened to come to the scene was not spared. He also was attacked by accused No.3

with an axe. Except for Shivaraya the four other victims died on the spot. Shivaraya survived for some time and according to the prosecution he was taken to a dispensary for treatment. There his dying declaration was recorded. Meanwhile the news of the assault was carried by Basangauda to his cousin Budragauda. He informed the police Sub-Inspector at Saundatti who sent constables on the scene. When the Sub-Inspector came, the investigations commenced with the first Information given by Somangauda. That in brief is the prosecution case. This case was supported by the evidence of the several eye-witnesses and by the dying declaration. Apparently at first sight the evidence adduced appears to be overwhelming. But the learned Judge in his charge to the jury pointed out several infirmities in this evidence. It was because of these infirmities in the evidence that the jury, the assessors and the learned Judge came to the conclusion that despite the large volume of evidence produced by the prosecution they had failed to prove their case against the accused. It is therefore necessary for us to examine whether this evidence is sufficient to bring home to the accused the guilt with which they stand charged. The first witness is Somangauda. He gave the First Information and he supported the prosecution case by describing the details which I have already mentioned. Now with regard to this witness there are two points on which the defence have relied. The first of these relates to the addition of 10 other persons which he made in the First Information, Exhibit 34. In this First Information Somangauda mentioned the 8 accused and 10 others as the assailants who were responsible for the five murders that day. The defence contends that these 10 persons are not before the court and the prosecution make no secret of the fact that there is no evidence against them and that they took no part

in this affair. The natural argument is that if the witness added 10 people, which must be presumed to be on his own, it would be risky to attach any value to his evidence when he mentioned the 8 accused before the court. The witness pleaded that when he gave the First Information he was utterly dazed and he may have stated the names of the other people as assailants even though they were merely standing by and took no part in the assault. It is obvious that considerable allowance must be made in favour of this witness who must have been completely paralysed to see four of his relatives butchered like beasts and if the matter had rested merely on the addition of these 10 people something have been said in favour of this witness. Unfortunately, however, there is another part of a story in the First Information which also calls for criticism and this relates to Tamangauda. In his First Information this witness stated that Tamangauda gave a cut with an axe to Shivarayappa and that he saw it. As point of fact Tamangauda is not before the Court and it has been conceded by the investigating officer that the investigation disclosed that Tamangauda has nothing to do with this offence. That naturally raises a serious question as to whether when this witness falsely implicated Tamangauda and attributed to him a specific, act in the assault, it is possible to believe him when he implicates the other people now. When the offence was reported the sub-Inspector who took up the investigation was one Rajasaheb Jamadar. It was Rajasaheb who recorded the First Information and it is alleged by Rajasaheb that when he arrested Tamangauda, a panch Mahar was made about the blood-stained clothes and the blood-stained axe that Tamangauda was carrying. It would appear that it was represented to the senior Police Officers of this place that Tamangauda was falsely implicated in this case and Rajasaheb was responsible for it. Whereupon the D.S.P.

promptly took away the investigation from Rajasaheb's charge and entrusted one Karjgi with that task. It appears from the evidence of Somangauda that on the 16th, Karjgi met him and brought to his notice that Tamangauda had been mentioned in the assault and that Tamangauda had nothing to do with it. The witness Somangauda says that when this was put to him, he stated that he had made a mistake and the argument for the prosecution is that Tamangauda's name must have been deliberately mentioned by Jamadar though Tamangauda had nothing to do with it. This witness, however, does not say so. He says that it was his mistake and when it was specifically put to him by the defence as to whether he had included the name of Tamangauda and assigned him the specific part in the assault, and whether this was done at the instance of the police Sub-Inspector, this witness said that it was not so. We do not propose to express any opinion upon the conduct of witness Jamadar because in reference to the Panch Nama which he is alleged to have made in regard to the blood-stained cloth and blood-stained axe of Tamangauda, Tamangauda is not before us nor has the pancha given evidence in this case and proved the said Panch Nama. The learned Government Pleader says that the prosecution were in a somewhat difficult position because they have already started some investigations against the Jamadar and they did not want to prejudice him by making an allegation about his panch Nama in the present proceedings. However, that may be, since the panch Nama has not been produced before us and there is no other material made available to us on which we can express any opinion as to the conduct of Jamadar in this matter it would not be desirable that we should say anything about it. On the record as it stands then the position is that Somangauda implicated Tamangauda, assigned to him a specific part and he admits that it is false and that the allegations made by him are

wholly untrue. But the confusion from which Somasundra must obviously have suffered at the time whene he gave the First Information cannot in our opinion justify the very serious allegation he made against Tama-ngasuda. No. doubt the w-itness says that Somasundra is not unfriendly with the family of the deceased and the defence have challenged that part of the case. But however, that may be, we have a statement made by this witness as regards Somasundra and as regards 9 others which directly conflicts with his present case and that would naturally put any Criminal Court on it/guard while dealing with his evidence. This is the position with regard to Somasundra's evidence. There is another feature about this case which relates to the rest of the witness on whom the prosecution rely. Everyone of them has described the assault by giving details as to what was done by each one of the accused in respect of each one of the victims and the details given by them are identical in terms. The defence concedes that t is identity of details by itself need not be a matter of doubt because if the witnesses saw the assault and they remembered a few strokes given by some of the accused against some of the victims, they might narrate the story in similar if not identical terms. But the remarkable feature of the evidence of these witnesses is that each one of them had failed to mention these details before the police. Their statements were recorded the next day after the incident and it would appear that some these witnesses admitted that they did not rember which accused was carrying which weapon and they were unable to describe the partplayed by each one of them. The other w itnes es have not made such a clear admission, but it is on the record that they did not mention the details at all and this feature is common to all the witnesses in the case. That in our opinion is a serious matter if the learned Judge

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who tried the case and who had the obvious advantage of watching the demeanour of the witness came to the conclusion that the story deposed to by them cannot be accepted partly because of the demeanour and substantially because of this infirmity in the evidence, it would be difficult for us to take a contrary view. The next witness is Ramangauda. He is not an eye-witness. He merely introduced the story of the prosecution by mentioning that he contacted the sub-Inspector, gave him the information about these murders and secured the assistance of Police Constables to come on the scene of offence. Then we have Babangauda. He describes the prosecution story in full. In cross-examination he admitted that he had not told the Inspector of police as to the beat which of the victims and he had not given details about it at all. Then he goes on to say that when the Inspector questioned him, he told the inspector that he did not exactly remember which of the accused were armed with what particular weapons. He also adds that before he was examined in the committing Magistrate Court the police Prosecutor told him that he would be asked about the details and he would have to give details. It is very doubtful if the police Prosecutor was justified in clearly suggesting to the witness that if he asked the details, he may have to give them. But apart from that, we have clear admission of this witness that the next day he told the Police Inspector that he did not remember which the accused had carried which weapon and he gave no details about the assault at all. That being so, it is impossible to believe his story when he describes the details in the Sessions Court. It may be that the story which he deposed to may be true, but in a court of law if a witness makes additions to his story and seeks to make the story picturesque by details it would be difficult to believe it once it is shown that these details were not

mentioned at the earlier stage. The next witness is Ramangamma. He speaks about the same story and he mentions virtually the same assailants. He also adds that though he saw this assault he did not mention anything about it even to his father. Then we have the evidence of three ladies in the family of the deceased. The first of them is Sha vaka. She is the widow of Ramangamma. She deposed to what she saw about the assault. Then she says that the accused entered the house and she was beaten and fell down on the ground injured. The difficulty in believing this witness is that before the Police she stated that after the assault was over, she closed the door of the house and according to that story nothing further happened. Of course she made a different statement in the Sessions Court, but it has been brought out in the evidence of the Sub-Inspector who recorded this statement that the only story which the witness deposed to him was that she saw the assault and after wards the door of the house was closed. The details that she describes were not mentioned before the police and the allegation that the accused entered the house is not consistent with her evidence before the police.. That takes us to the next witness who is Shivalingamma and the position of her evidence is just the same. She mention to the police about the closing of the door and in her evidence in the Sessions Court she has given all the details. This witness claimed that she had told the details to the police Inspector but from the evidence of the police Inspector it is clear that she did not mention anything of the kind. The last witness in this group is Mila-ma. She is a young girl of 12 years and in her cross-examination she admitted that she had not given details to the Police Inspector when her statement was recorded. The learned Advocate in charge of the defence was not content with this admission but he pursued her

and in the end the witness stated that she had given details to the Police Inspector and it was brought out in the evidence of the police Inspector that this story was not true. The learned Government Pleader has criticised the method adopted by the defence in cross-examining this young girl. We think there is a substance in the criticism of the government Pleader. Once the witness had admitted that she did not given any details to the police, it is difficult to see how the defence was justified in pursuing the girl any further. But whatever one may say about this method of cross-examination, the position is that she has described the details in the Sessions Court which she has mentioned none of them to the police. That being so, no value can be attached to this evidence. Then we have the evidence of Durgayya. Durgayya was standing at some distance and saw the assault. He described the details but in cross-examination he admitted that he mentioned to no details to the police and he did not refer to accused No.7 in that statement though he alleged in his evidence that he had mentioned it. In the evidence of Rayangoula there is a clear contradiction of the witness' evidence. Then we have Buddayya. His evidence is open to the same criticism, with this additional circumstance that in the Committing Court he had not mentioned any thing about accused No.8 which he did in the Court of Sessions. Lastly we have Hanmatayya. He also given the same details and in the cross-examination he admits that he had not mentioned them before. It would appear that the statement of this witness was recorded under section 164 of the Criminal Procedure Code and even there he did not mention such these details. That is the whole of the prosecution evidence. Having considered the evidence carefully we feel it is impossible for us to take the view that the learned Judge was not right in disbelieving these witnesses.

A The prosecution then relied upon the dying declaration alleged to have been made by Shivraya and the learned Government Pleader has asked us to consider this evidence also, before we finally decide whether the prosecution has proved their case against the accused. Now this dying declaration was recorded before a Magistrate and the Magistrate had given evidence in this case. We must express our surprise at the manner in which the learned Magistrate has given evidence in support of the dying declaration that he recorded. The deceased Shivaraya had been seriously injured and the injuries were apparent because his lips had been completely cut. There was an incised wound cutting the left nostril from the tip and running upwards and inwards up to the bridge of the nose. There was an incised wound on the left side of the lower lip. There was an incised wound extending to the left side of the chin cutting the lip completely. There was an incised wound below the outer side of the left eye-brow. There was an incised wound on the left side of the head. There was an incised wound on the back and upper t-hird of right forearm, and on the back of the head one inch away to the left of the middle line. Besides there were several injuries on the person of this unfortunate victim. The learned Magistrate who recorded this confession admitted that he did not see any of these injuries at all. He no doubt added that he had satisfied himself that Shivaraya was conscious and was fully giving intelligent answers to the question put to him. But the medical evidence would show that Shivaraya had suffered from grievous injuries and was lying suffering from great pain and agony, and yet the learned Magistrate noticed nothing about this condition at all. This Magistrate also added that after the questions and answers were over, Shivaraya could put his signature without any difficulty. It seems to us very difficult to believe that Shivaraya who was injured

in the way which I have just described could have signed this dying declaration without difficulty. The Doctor who had attended on this patient was not present when the dying declaration was made though the Magistrate says that he had asked the Doctor whether he was conscious. He would have been better advised if he had asked the Doctor to be present when the dying declaration was recorded. That being so, we are not satisfied with about the method adopted by the Magistrate in recording this dying declaration. Dying declaration are admissible in evidence but it cannot be disputed that they are a weak peace of evidence. The oral evidence on which the prosecution based their case has been found by us to be unworthy of credence. It is therefore impossible for us to hold that the prosecution case is proved on this dying declaration. We have carefully considered all the facts of this case and though we regret that the brutal murders of this kind should go unpunished, we cannot obviously allow any feeling of moral indignation to influence our judgment. It is true that in dealing with the evidence in this case we have to bear in mind the fact that they may have proved some motive against the accused which would tend to make the prosecution case probable against them but the evidence of motive cannot take place of substantial evidence on which the prosecution can and ought to rely and judging the prosecution case by the substantial evidence adduced in this case, we feel the learned Judge, the jury and the assessors were right in the view they took. That being our view, we must hold that the order of acquittal in favour of the accused was justified. The result is that the appeal fails and it must be dismissed-

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By the Court,

Assistant Registrar.

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